



**THE CITY OF NEW YORK
LAW DEPARTMENT**

100 CHURCH STREET
NEW YORK, NY 10007

ZACHARY W. CARTER
Corporation Counsel

DAVID COOPER
Assistant Corporation Counsel
phone: (212) 356-3535
fax: (212) 356-3509
email: dcooper@law.nyc.gov

June 25, 2014

VIA ECF

The Honorable Joan M. Azrack
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Sanders v. City of New York, et al., 14 CV 3252 (SJ) (JMA)

Your Honor:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department, writing on behalf of the Office of the Corporation Counsel of the City of New York ("this Office" or, alternatively, "Corporation Counsel")¹ in the above-referenced case. Without appearing or making any representations as to the adequacy of service or otherwise on their behalves, this Office respectfully writes, with the consent of plaintiff's counsel, Gabriel Paul Harvis, with the hope that the Court *sua sponte*: (1) grant individually named defendants "Sergeant Kevin Colvin" and "Police Officer Moises Colon" a sixty-day enlargement of time to answer, from June 25, 2014 to August 25, 2014 to respond to the Complaint as this Office has been unable to determine representation issues at this time; and (2) adjourn the initial conference scheduled for August 5, 2014 to a later date.

By way of background, plaintiff alleges, *inter alia*, that on May 17, 2013, he was falsely arrested and subjected to excessive force by officers of the New York City Police Department. On June 4, 2014, "Kelvin Colvin" and "Moises Colon" were served with a copy of

¹ Upon information and belief, and upon review of the Docket Sheet, the City of New York has not been served with a copy of the summons and complaint; therefore, it is not yet a defendant in this action.

the summons and Complaint; accordingly, their responses to the Complaint are due on June 25, 2014. (Dkt. Nos. 6-7.) An enlargement will allow this Office to ascertain whether it will represent “Kelvin Colvin” and “Moises Colon.” Pursuant to N.Y. GEN. MUN. LAW § 50-k, Corporation Counsel must determine, based on a review of the case, whether we may represent “Kelvin Colvin” and “Moises Colon.” “Kelvin Colvin” and “Moises Colon” must then decide whether they wish to be represented by this Office. If so, this Office must obtain the written authorization of “Kelvin Colvin” and “Moises Colon.” Only after this procedure has been followed can this Office determine how to proceed in this case as to “Kelvin Colvin” and “Moises Colon.” See Mercurio v. City of New York, 758 F.2d 862, 854-65 (2d Cir. 1985) (quoting Williams v. City of New York, 64 N.Y.2d 800; 486 N.Y.S.2d 918 (1985) (decision to represent individual defendants is made by Corporation Counsel as set forth in state law)).

Additionally, before this Office can adequately respond to the Complaint, we will need to conduct an investigation into the facts of the case. This Office recently received a N.Y. CRIM. PROC. LAW § 160.50 release form and a medical release form pertaining to the underlying alleged incident and has recently processed both releases, but to date it has yet to obtain documents concerning the underlying alleged incident. Accordingly, an enlargement of time will afford this Office the opportunity to investigate the matter.

On May 27, 2014, the Court scheduled an initial conference in this matter for August 5, 2014. (See Docket Sheet.) However, should the Court be inclined to grant *sua sponte* an enlargement, a response to the Complaint is due after the date of the initial conference as it is currently scheduled. It is my understanding that counsel for all parties are generally available during the week of August 31, 2014, and during the week of September 7, 2014 with the exception of September 10, 2014 for a rescheduled initial conference, should any of those dates and times be convenient for the Court.

For the foregoing reasons, this Office writes with the hope that the Court: (1) *sua sponte* extend the time for “Kelvin Colvin” and “Moises Colon” to respond to the Complaint to and including August 25, 2014; and (2) adjourn the initial conference to a later date convenient for the Court.

Thank you for your consideration in this regard.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Cooper", written in a cursive style.

DAVID COOPER
Assistant Corporation Counsel
Special Federal Litigation Division

cc: VIA ECF
Gabriel Paul Harvis
Harvis Wright & Fett LLP
305 Broadway, 14th fl.
New York, NY 10007